

CDC Best Practices Guidance
Findings of No Unremedied Substantial Adverse Change

This guide discusses best practices for Certified Development Company (CDC) compliance with certain 504 Loan Program Requirements. “504 Loan Program Requirements” include those imposed on CDCs by statute, SBA regulations (including 13 CFR Part 120), any agreement the CDC has executed with SBA, SBA’s Standard Operating Procedures (SOPs) (including 50 10 (Lender and Development Company Loan Programs) and 50 55 (504 Loan Servicing and Liquidation)), official SBA notices and forms, and loan authorizations, as such requirements are issued and revised by SBA from time-to-time. In the event of any conflict between this guide and the 504 Loan Program Requirements, the 504 Loan Program Requirements take precedence. SBA regulations (13 CFR 120.180) require all CDCs to comply and maintain familiarity with all 504 Loan Program Requirements as such requirements are revised from time-to-time.

A. Overview

In connection with the closing of a 504 loan, 13 CFR § 120.892(c) and SOP 50 10 require a CDC to issue an opinion that to the best of its knowledge there has been no unremedied substantial adverse change in the Borrower’s (or Operating Company’s) ability to repay the 504 loan since the submission of the loan application to SBA (“CDC Finding”). CDCs that do not have ALP or PCLP status must submit the CDC Finding to SBA’s Sacramento Loan Processing Center (“SLPC”) and obtain the SLPC’s approval of the CDC Finding before debenture closing. ALP and PCLP CDCs are not required to obtain SLPC approval of the CDC Finding, but those CDCs must retain the CDC Finding in their files. SBA may review a CDC Finding by a CDC with ALP or PCLP status in connection with a SMART review or the CDC’s ALP or PCLP renewal application.

Additionally, all CDCs (including those with ALP and PCLP status) are required to submit SBA Form 2101 (CDC Certification) with each 504 debenture closing package. Among other things, Form 2101 at paragraph 7.a. requires a CDC to certify, to the best of its knowledge after diligent inquiry, that since the date of the Borrower’s application to the CDC for the 504 loan, there has been no unremedied substantial adverse change in the financial condition of the Borrower or Operating Company. SBA Form 2101 provides that the CDC warrants and represents that all information provided to SBA, including all information regarding the Borrower’s and Operating Company’s financial condition is accurate to the best of the CDC’s knowledge and that the CDC has not withheld any material information from SBA. SBA Form 2101 also provides for certain criminal and civil penalties for the submission of false information or the withholding of material information from SBA.

1. What is the required documentation that non-ALP/PCLP CDCs must submit to the SLPC in order to obtain approval of a Finding of No Unremedied Substantial Adverse Change (“Required Documentation”)?

- A. CDC’s Finding of No Adverse Change:
- CDC Finding made within 120 days of 504 loan approval: A CDC must submit a written, signed, and dated 327 action to the SLPC stating that the CDC has determined that there has been no unremedied substantial adverse change in the financial condition of the Borrower or Operating Company since the date of the most recent reporting period documented in the 504 loan approval credit memorandum.
 - CDC Finding made 120 days or more after 504 loan approval: A CDC must submit a written, signed, and dated 327 action stating that the CDC has reviewed updated financial statements for the Borrower and Operating Company and the CDC has determined that there has been no unremedied substantial adverse change in the financial condition of the Borrower or Operating Company since the date of the most recent reporting period documented in the 504 loan approval credit memorandum.
- B. The CDC must submit copies of updated financial statements for the Borrower and Operating Company (and all affiliates, if any) for all elapsed reporting periods since the date of the most recent reporting period documented in the 504 loan approval credit memorandum to within 120 days of the CDC’s Finding. *Each page of the financial statements must be signed and dated by an owner of the entity.*
- C. The CDC must provide a written analysis of the updated financial statements and the Borrower’s and Operating Company’s financial condition as compared to the financial information submitted with the 504 loan application.

D. Best Practice - CDC statement regarding projections:

- In the case of no change in projections since the 504 loan approval date, the CDC should state that original projections remain valid.
- In the case of changes in projections since the 504 loan approval date, the CDC should provide a copy of the updated projections, reasons for the changes, and the CDC's rationale for acceptance of the changes.

E. Best Practice - Additional Documentation for Start-ups:

- Copies of updated personal financial statements within 120 days of the CDC's Finding
- CDC statement as to why business has yet to begin operations
- CDC statement as to why original projections remain valid

F. Best Practice - Explanation of Borrower FICO scores that are less than or equal to 680

2. Is the Required Documentation different for ALP/PCLP CDCs versus non-ALP/PCLP CDCs?

ALP and PCLP CDCs must make a CDC Finding with all of the above Required Documentation, but those CDCs are not required to obtain SLPC approval of the CDC Finding. ALP/PCLP CDCs must retain the CDC Finding and all Required Documentation in their files. SBA may review a CDC Finding by an ALP/PCLP CDC in connection with a SMART review or the CDC's ALP or PCLP renewal application.

3. When must the CDC's Finding of No Unremedied Substantial Adverse Change be made?

All CDCs must make the finding that there has been no unremedied substantial adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since its submission of the loan application within the following timelines:

- Non-ALP/PCLP CDCs: The CDC's Finding of No Adverse Change must be made no more than 14 calendar days prior to submission of the 327 action to the SLPC at the time the CDC is requesting that SLPC transmit the 504 loan file to District Counsel for debenture closing.
- ALP/PCLP CDCs: ALP/PCLP CDCs must make the Finding of No Adverse Change 14 calendar days prior to the CDC's submission of the debenture closing package to District Counsel.
- If the debenture closing is not consummated in the month following the CDC's Finding, all CDCs must make a new CDC Finding following the process and timelines above.